



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104
December 16, 2020

MEMORANDUM

SUBJECT: Determination that EPA's Decision to Approve or Disapprove the State of Florida's Request to Assume Administration of a Clean Water Act Section 404 Program Will Comply to the Maximum Extent Practicable with the Coastal Zone Management Act

FROM: Jeaneanne M. Gettle, Director
Water Division

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TO: FILE

This Memorandum documents EPA's determination that a decision to approve the State of Florida's request to assume administration and permitting of a Clean Water Act (CWA) Section 404 program will comply to the maximum extent practicable with the Coastal Zone Management Act.

BACKGROUND

Section 404 of the CWA authorizes the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into waters of the United States. Section 404(g) of the CWA allows a state or tribe to submit to EPA a request to assume administration of a Section 404 program in certain waters within the state's or tribe's jurisdiction. On August 20, 2020, EPA received from the Governor of the State of Florida a program submission for regulating discharges of dredged or fill material into waters within the jurisdiction of the State in accordance with the CWA. EPA subsequently determined the Florida submission to be complete and is reviewing the submission consistent with Section 404 of the CWA and implementing regulations at 40 C.F.R. Part 233. EPA will complete its review and either approve or disapprove the State of Florida's request to assume administration of a CWA Section 404 program on or before December 17, 2020.

The Coastal Zone Management Act of 1972 (CZMA) established a voluntary national program within the Department of Commerce to encourage coastal states to develop and implement coastal zone management plans. Pursuant to the CZMA, Florida developed and implemented a coastal zone management plan and the Florida Department of Environmental Protection (FDEP) is the agency that oversees the State's federally approved Coastal Zone Management Program. Section 307 of the CZMA requires certain federal actions within and outside Florida's coastal zone to be consistent with the provisions of Florida's Coastal Zone Management Program. In issuing CWA Section 404 permits, the Corps complies to the maximum extent practicable with Florida's Coastal Zone Management Program. In assuming Section 404 permitting authority from EPA, Florida must ensure that CWA Section 404 permits issued by FDEP comply with the provisions of its own Coastal Zone Management Program to the maximum extent practicable.

ASSESSMENT

Florida adopted a specific regulation to meet the CZMA requirement. Rule 62-331.070(2) of Florida's 404 program regulations provides "compliance with the Coastal Zone Management Program shall be required for issuance of a permit." The July 31, 2020, General Counsel's Statement included as part of Florida's submission requesting to assume administration of a CWA Section 404 program further confirms that, "pursuant to Rule 62-331.070, F.A.C., no permit may be issued without compliance with state water quality standards, the Coastal Zone Management Program, and as detailed above, the prohibitions set forth in 40 C.F.R. § 233.20."

DETERMINATION

EPA has determined, based on consideration of available information and consistent with the assessment above, that Florida's rules would ensure that issuance of State Section 404 permits will comply with the CZMA. Accordingly, any decision by EPA to approve Florida's request to assume administration of a CWA Section 404 program will comply with the CZMA.

Attachment:

- July 31, 2020 General Counsel's Statement